

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Waikato Regional Plan Change  
1 – Waikato and Waipa River  
Catchments (“Proposed Plan or PC1”)

**AND**

**IN THE MATTER** of submissions and further submissions by Oji  
Fibre Solutions (NZ) Limited

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**STATEMENT OF PRIMARY EVIDENCE OF GUY SALMON ON BEHALF  
OF OJI FIBRE SOLUTIONS (NZ) LIMITED  
FOR HEARINGS PARTS A AND B**

**15 FEBRUARY 2018**

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## **1. SUMMARY**

1.1 While the rationale for PC1 rests heavily on the use of a collaborative stakeholder process to develop the plan provisions, this process was not governed by a consensus rule for the making of recommendations as is the normal practice. Instead, majority voting was allowed. As a result, major differences on fundamental issues characterised the outcome.

1.2 At the invitation of the regional council in October 2013, I was asked to comment on the design of the collaborative process, before it was cast into its final form. At that time I warned about the risks of certain design features, especially the provision for voting on recommendations. This advice was not accepted by the council.

## **2. INTRODUCTION**

2.1 My full name is Guy Winston Salmon. I am a specialist in environmental strategy, policy and governance, with a particular focus on the development and assessment of collaborative governance practices.

2.2 I graduated from Victoria University of Wellington with a Bachelor of Arts majoring in sociology and geography. After some years as an environmental advocate and consultant, including on a number of government review groups and technical advisory groups, I became a researcher in 2003. Through Ecologic, I was funded by the Foundation on Research, Science and Technology (FRST) to undertake four years of comparative studies in environmental governance in New Zealand and the Nordic countries. This work was carried out with Dr Kim Zilliacus of the University of Helsinki. Our findings were presented at a seminar in Wellington attended by other researchers, senior officials and politicians. Our key finding, generally accepted by those attending, was that New Zealand could benefit from making greater use of the consensus-building approach to environmental problem-solving that is widely practiced in Finland, Sweden, Denmark and Norway. The incoming Minister for the Environment, Hon Nick Smith, subsequently agreed to a proposal to establish the Land and Water Forum, a very productive collaborative entity on which I served for eight years.

- 2.3 During this time I was also involved respectively as an adviser, as project manager/editor, and as a researcher, in three other particularly significant collaborative processes: the Consensus Building Group on Auckland Transport Funding, the Upper Waitaki Shared Vision process (which led to the signing of the Mackenzie Agreement), and the work of Steering Group which agreed on the Canterbury Water Management Strategy. My report on the latter, published by the Ministry for the Environment, includes a detailed analysis of the democratic credentials of collaborative governance.
- 2.4 Recently I have carried out a large number of interviews of participants in collaborative processes for the purpose of preparing an overview report which compares ten case studies of collaborative practice in New Zealand. My aims for this report are to draw conclusions about how collaborative governance has worked in practice, in the New Zealand context, and to provide some assessment of what practices work best in a range of circumstances. The Waikato Region's Healthy Rivers Wai Ora process is one of the case studies being analysed in this report. The report is currently a draft in preparation and has not yet been peer-reviewed.

#### **Expert Witness Code of Conduct**

- 2.5 Although these proceedings are not before the Environment Court, I have read and am familiar with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

#### **Outline of evidence**

- 2.6 In my evidence I address the following matters:
- (a) the use of collaborative governance in developing Plan Change 1 ("PC1");
  - (b) the recommendations about the design of the Healthy Rivers Wai Ora collaborative governance process that I provided to the Waikato Regional Council prior to establishment of the CSG.

### **3. USE OF COLLABORATIVE GOVERNANCE IN DEVELOPING THE PROPOSED WAIKATO REGIONAL PC1**

- 3.1 I regard Waikato's Healthy Rivers Wai Ora collaborative process as an important and genuine attempt by the regional council to engage effectively with its stakeholders on a long-standing environmental issue with big policy and stakeholder implications. In a comparative perspective, Healthy Rivers is of high interest for three reasons, in particular. First, for the way the process design fully recognised and accommodated the co-governance arrangements that, at the time, were unique to the Waikato. Second, for its constitution of a separate Technical Leadership Group (TLG), to facilitate participants' and Council's access to information that was independent and of high quality and credibility. TLG members responded to requests for information and technical judgments but were excluded from the formal consensus-forming and voting processes. Third, for the way the CSG departed from the prevailing consensus-based model, by allowing voting; and how in the end this may have hampered the ability of the region to find a shared solution to what is widely accepted as a major environmental issue.
- 3.2 The Section 42A Report (para 100) records that PC1 was developed by a Collaborative Stakeholder Group, which agreed not only on a set of outcomes, but also on detailed planning provisions for how to achieve those outcomes. However, the Section 32 Report (section B8) makes clear that the resulting text was not 'agreed' in the sense normally used in collaborative processes. In the scientific literature on collaborative governance, and in the recommendations of the Land and Water Forum, collaborative stakeholder processes are distinguished from other types of democratic process by their use of a consensus rule for the making of recommendations. In the Healthy Rivers process, instead of following a consensus rule, each provision of the report was voted on in the final stages of the process, recording any objections and the reasons for those objections.
- 3.3 A particularly significant feature of the Healthy Rivers outcome was that the sheep and beef farmers' representative, after consultation with those he was representing, decided to reject the document in its entirety at the end of the process. Further, other interests represented by a minority on the CSG voted in opposition to critical aspects of the proposed Plan. For

example, the forestry sector representative voted with the sheep and beef representative in opposition to 'grandparented' allocation of rights to diffuse dischargers of nitrate. These events reflected fundamental dissent by major stakeholders in the region, and it was followed by a divisive public debate in the region and at the council table. My study of the Healthy Rivers process focused especially on seeking to understand how this outcome developed. (I have conducted interviews with seven CSG members, covering the main sectoral interests at the table, and additional interviews with others involved. Interviewees will be listed in the report, which will be peer reviewed).

- 3.4 A highly unusual provision, that voting could be resorted to if repeated efforts at achieving consensus were not successful, had been accepted by all CSG members at the outset.<sup>1</sup> It appeared reasonable to them at the time. However, my interviewees provided some evidence that among the stakeholders there was an asymmetrical understanding of the actual significance of the voting provision. For some, the process was expected to be all about 'gifts and gains' under which consensus would be built through good understanding by stakeholders of each other's vital interests, reasoned discussion, and a willingness to deal with interests by exchanging concessions. Others appear to have thought ahead and realised, either at the outset or subsequently, that the provision for voting was rather more significant. Put bluntly, it created an incentive to those who were well-organised and thinking strategically, to over-ride other interests by force of numbers at the end of the process.
- 3.5 Retrospectively, the provision for voting is believed by several interviewees to have had an influence at three crucial stages in the process. First, in the early public meeting at which voting among those who turned up on the day was used to take decisions on the number of places that would be allocated to different interests. Second, in the decisions taken by members of the Waikato Regional Council and associated co-governance bodies regarding who would be chosen as 'community representatives.' Thirdly, in the substantive policy decisions taken, in which dairy industry interests, by then supported directly or indirectly by a range of individuals under different headings, had the confidence to hold firm on various key issues in the knowledge that they could win votes on them at the end of the process.

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<sup>1</sup> Terms of Reference (WRC 2014 Document # 2194147)

The management of the process unfortunately left several major issues unresolved until the end, when they had to be decided in a very compressed time frame.

3.6 The alternative to allowing voting would have been to confine CSG recommendations to those points on which there was a consensus (comprising both those who supported the recommendation, and those who are prepared to go along with it in the context of the agreement as a whole). In the case of the Healthy Rivers process, this would have left a small number of issues to be decided by the elected councillors. A further option used in some comparable collaborative stakeholder processes is to assist elected decision-makers by recording the reasoning behind the differences of view on one or two particularly significant issues that could not be covered by agreed recommendations. The effect of such alternative approaches is to maintain good relationships and a high level of mutual trust amongst the participants, and to avoid excessive community polarisation and the driving of an issue toward a long-lasting impasse.

3.7 The conclusion I have reached in my draft report comparing ten collaborative processes is that in the Waikato case, the design of the process, and especially its provision for voting, appears to have contributed to enhancing rather than resolving community divisions.

#### **4. MY ORIGINAL ADVICE TO THE WAIKATO REGIONAL COUNCIL ON THE DESIGN OF THE HEALTHY RIVERS WAI ORA PROCESS**

4.1 On 18 October 2013, I flew to Hamilton to meet with a group of senior regional council officers and iwi representatives involved in the design of the Healthy Rivers Wai Ora process. This meeting was at the invitation and expense of the regional council. It focused on concerns being raised by environmental interests about the proposed process, and it was also acknowledged that some of us had valuable knowledge and experience of collaborative processes. I was assured that it was not too late for changes to be made to the process design.

4.2 I raised three concerns about the proposal:

- (a) That the provision for voting would undermine the collaborative nature of the process and lead to division;

- (b) That the proposed departure from the practice of having only representatives of well-known stakeholder groups at the table, by adding political appointments of individuals deemed to be 'community representatives' would, in conjunction with the ability to vote, create an opportunity (or at least the public perception of an opportunity) for 'stacking' of the process and biasing of the outcome;
- (c) That the limitation of environmental and recreation groups to only two representatives was difficult to justify, given the environmental purpose of the proposed plan change, the range and diversity of interested groups, and the fact that the Land and Water Forum had five seats for environmental and recreation groups in a collaborative group of similar total size.

4.3 While these points were listened to and discussed, none of them was heeded and the proposal continued without change. I should add that, in compiling my report, my concerns regarding point (b) above have been partly allayed as a result of interviews with community representatives in this and other processes, and reading and thinking about the issues involved more widely in the years since 2013. As noted in section 3 above, I believe it is primarily the provision for voting in the CSG that has led to the apparent enhancement, rather than resolution, of community divisions.